

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>August 6, 2012</u>
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SOVEREIGN BANK, :

Plaintiff, :

-against-

USA FINANCIAL SERVICES, LLC and
JAMES A. MOSCATELLO :

Defendants. :

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11 Civ. 01063 (PAC)

ORDER

HONORABLE PAUL A. CROTTY, United States District Judge:

On December 14, 2011, the Court granted Plaintiff Sovereign Bank's ("Plaintiff") motion for summary judgment with respect to USA Financial Services, LLC and James A. Moscatello's (collectively, "Defendants") liability under the parties' Loan and Security Agreement, but found that questions of fact precluded the Court's determination as to the amount due under this agreement. On July 25 and August 6, 2012, the Court held hearings to determine the amount owed under the Loan and Security Agreement.

At the July 25, 2012 damages hearing, Plaintiff introduced Exhibit 1, which established that a gross balance of \$4,564,000 remains outstanding under the Loan and Security Agreement. Plaintiff also introduced Exhibits 2 and 3, in an attempt to show additional losses and charge offs owed under the agreement. Defendants successfully demonstrated that Exhibits 2 and 3 are inaccurate, absolutely unreliable, and cannot be used to establish a legal entitlement to damages. Plaintiff's witness conceded the inaccuracies. At the August 6, 2012 hearing, Plaintiff sought to introduce corrected exhibits showing the additional losses and charge offs owed. Defendants objected; and the Court sustained the objection. Having established the inaccuracies and unreliability of Plaintiff's records, it is not fair to Defendants and not permissible for Plaintiff to "do over" its records to eliminate the errors it submitted

to the Court on July 25, 2012. Throughout the hearings, however, the Defendants never presented any viable challenge to the validity of Exhibit 1. Defendants' argument that because Exhibits 2 and 3 are inaccurate, that Exhibit 1 is inaccurate as well is rejected

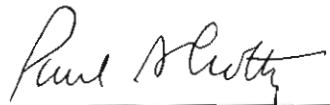
The Court thus finds that the Plaintiff has established that the amount Defendants owe under the Loan and Security Agreement is \$4,564,000, plus interest and attorneys' fees. Interest is to run at 4.25% from October 31, 2010, the date of Defendants' default, through August 6, 2012. Attorneys' fees will be determined by the Court, after Plaintiff's counsel submits contemporaneous time records, reflecting the work done in this litigation.

Defendants' request to hold this award in abeyance while third-party leases are still in effect is DENIED. This argument has been made and rejected previously. As the Court stated in its December 2011 Order, Plaintiff has the right to accelerate the indebtedness and declare payment of unpaid principal due. See December 2011 Order at 3-4.

The Clerk of Court is to calculate Defendants' liability under the Loan and Security Agreement, which amounts to \$4,564,000, plus 4.25% interest per annum, running from October 31, 2010 through August 6, 2012. Defendants are further liable for Plaintiff's reasonable attorneys' fees and costs, in an amount to be determined by the Court at a later date.

Dated: New York, New York
August 6, 2011

SO ORDERED



PAUL A. CROTTY
United States District Judge